

STATE OF MICHIGAN  
COURT OF APPEALS

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JOSEPH FOUNTAINE,

Plaintiff-Appellant,

v

SINGH OF NORTHRIDGE LIMITED  
PARTNERSHIP AND SINGH MANAGEMENT,  
L.L.C.,

Defendants-Appellees.

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UNPUBLISHED

August 29, 2006

No. 260006

Oakland Circuit Court

LC No. 04-056708-NZ

Before: Saad, P.J., and Jansen and White, JJ.

WHITE, J. (*dissenting*).

I respectfully dissent. Plaintiff presented sufficient evidence below to raise a genuine issue of fact regarding whether the icy condition in defendants' parking lot had existed for a sufficient length of time for defendants to have constructive notice of the icy condition.

Plaintiff testified on deposition that when he arrived at the apartment between 7:00 and 8:00 p.m. on the evening before his fall (April 9, 2003), he walked from his car to the apartment, taking the same route he took the following morning when he fell, and that he neither observed nor slipped on any ice that night. Plaintiff testified that the next morning when he left the apartment around 7:40 a.m. and walked to his car, the sidewalks had been salted. Plaintiff presented documentary evidence that the weather conditions existing from around 3:00 a.m. to 7:00 a.m. on the morning of April 10, 2003, were that the temperature fluctuated between 28 and 30 degrees. Plaintiff submitted evidence that defendants' policy was to have their maintenance technicians inspect the entire apartment complex property, including parking lots, for potential icy conditions around 3:00 a.m. each winter morning, and to accomplish any necessary salting by 7:00 a.m. Plaintiff submitted maintenance records of defendants that indicated that defendants and a contracted snow removal company had salted a number of parking lots in the apartment complex, but did not salt Building 36's parking lot between April 5, 2003 and April 10, 2003 (the day plaintiff fell). Plaintiff presented deposition testimony below of one of defendants' maintenance technicians, who testified that defendants kept a maintenance staff of approximately six technicians, and that the staff rotated on a weekly basis, with a designated 24 hour a day on-call technician. The maintenance technician testified that one of the functions of the technicians was to inspect areas around parked cars, because those areas were possible paths for people to walk to get in their cars. Plaintiff also presented deposition testimony of defendants' facilities

manager, who confirmed the accuracy of the maintenance technician's deposition testimony as to the technician's functions of inspecting the property and salting icy areas by 7:00 a.m.

From this evidence, reasonable jurors could conclude that the icy condition that caused plaintiff's fall had formed during the overnight period preceding his fall, and had existed for a sufficient length of time that defendants should have had constructive knowledge of it. I would reverse the circuit court's grant of summary disposition to defendants.

/s/ Helene N. White